88-485

No. _____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

TEAMSTERS PENSION TRUST FUND OF PHILADELPHIA AND VICINITY, TEAMSTERS HEALTH AND WELFARE FUND OF PHILADELPHIA AND VICINITY and CHARLES J. SCHAFFER, JR.

Petitioners,

v.

ROGER E. WOOLEYHAN, RALPH K. FILLINGAME, WILLIAM A. PHILLIPS and ROGER B. WOOLEYHAN

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS W. JENNINGS
Counsel of Record
KENT CPREK
SANFORD G. ROSENTHAL
SAGOT & JENNINGS
1172 Public Ledger Building
Independence Square
Philadelphia, PA 19106
(215) 922-6700
Attorneys for Petitioners

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CHAPEL/ADVERTISING PRINTING CO. INC. • CHERRY HILL NJ 08002 • (609) 663-4000 • (215) 925-4000

QUESTIONS PRESENTED FOR REVIEW

1. Whether the specific multiemployer plan rules and purpose of 29 U.S.C. §§ 1145, 1132 (g) (2), enacted in 1980, save the Delaware Wage Payment and Collection Act, as it concerns collection remedies of a multiemployer benefit plan, from the general pre-emption rule of 29 U.S.C. § 1144 (a), enacted in 1974.

2. Whether 29 U.S.C. § 1144 (a) pre-empts all state law in relating to arm's length commercial transactions involving an employee benefit plan.

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

TEAMSTERS PENSION TRUST FUND OF PHILADELPHIA AND VICINITY, TEAMSTERS HEALTH AND WELFARE FUND OF PHILADELPHIA AND VICINITY and CHARLES J. SCHAFFER, JR.

Petitioners,

v.

ROGER E. WOOLEYHAN, RALPH K. FILLINGAME, WILLIAM A. PHILLIPS and ROGER B. WOOLEYHAN

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

Petitioners Teamsters Pension Trust Fund of Philadelphia and Vicinity, Teamsters Health and Welfare Fund of Philadelphia and Vicinity and Charles J. Schaffer, Jr. ask that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Delaware entered in this case on June 23, 1988.

OPINIONS BELOW

The order of the Supreme Court of the State of Delaware is unreported and is reproduced as Appendix A of this petition. The letter opinion of the Superior Court of Delaware for New Castle County is unreported and is reproduced as Appendix B of this petition.

JURISDICTION

The order of the Supreme Court of the State of Delaware was entered on June 23, 1988. The Court has jurisdiction by writ of certiorari under 28 U.S.C. § 1257 (3) as the validity of a state statute is drawn in question on the ground of its being repugnant to the laws of the United States and Article VI, § 2 of the Constitution.

STATUTES INVOLVED

The statutory provisions of direct relevance are §§ 515, 502 (g) (2), 3 (5) and 514 of the Employee Retirement Income Security Act, as amended by the Multiemployer Pension Plan Amendments Act, ("ERISA"), 29 U.S.C. §§ 1145, 1132 (g) (2), 1002 (5), 1144 (1982), and 19 Del. Code Ann. tit. 19 §§ 1101 (b), 1109 (1985).

29 U.S.C. § 1002. Definitions.

* * *

(5) The term "employer" means any person acting directly as an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

29 U.S.C. § 1132. Civil enforcement.

* * *

(g) Attorney's fees and costs; awards in actions involving delinquent contributions.

* * *

(2) In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce section 1145 or this title in which a judgment in favor of the plan is awarded, the court shall award the plan -

(A) the unpaid contributions,

(B) interest on the unpaid contributions,

(C) an amount equal to the greater of -

(i) interest on the unpaid contributions, or

(ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),

(D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and

(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of Title 26.

29 U.S.C. § 1144. Other laws.

(a) Supersedure; effective date.

Except as provided in Subsection (b) of this section, the provisions of this subchapter and Subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in Section 1002 (a) of this title and not exempt under Section 1003 (b) of this title.

29 U.S.C. § 1145. Delinquent contributions.

Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

19 Del. C § 1101. Definition of terms.

(b) For the purpose of this chapter the officers of a corporation and any agents having the management thereof who knowingly permit the corporation to violate this chapter shall be deemed to be the employers of the employees of the corporation.

19 Del. C. § 1109. Benefits and wage supplements.

(a) Any employer who is party to an agreement to pay or provide benefits or wage supplements to any employee shall pay the amount or amounts necessary to provide such benefits or furnish such supplements within 30 days after such payments are required to be made; provided, however, that this section shall not apply to employers subject to Part I of the Interstate Commerce Act.

(b) As used herein, "benefits or wage supplements" means compensation for employment other than wages, including, but not limited to, reimbursement for expenses, health, welfare or retirement benefits, and vacation, separation or holiday pay, but not including disputed amounts of such compensation subject to handling under dispute procedures established by collective bargaining agreements.

STATEMENT OF THE CASE

Petitioners are the Teamsters Pension Trust Fund of Philadelphia and Vicinity, the Teamsters Health and Welfare Fund of Philadelphia and Vicinity and Charles J. Schaffer, Jr., the administrator of the Funds and a named fiduciary. The Funds provide health and retirement benefits to approximately 100,000 eligible participants and beneficiaries. They are employee welfare and pension benefit plans within the meaning of ERISA, 29 U.S.C. §§ 1002 (1), 1002 (2). The Funds are collectively bargained multiemployer plans within the meaning of 29 U.S.C. § 1002 (37) and deal at arm's length with over 1,000 independent employers from a variety of states, including New York. Mr. Schaffer is the fiduciary charged with collecting contributions due the Funds under the standards in 29 U.S.C. §§ 1104, 1106.

Respondents Roger E. Wooleyhan, Ralph K. Fillingame, William A. Phillips and Roger B. Wooleyhan are the owners and officers of Wooleyhan Transport Company ("Wooleyhan" or "Company"), a Delaware corporation. Wooleyhan's truck drivers and other employees were represented for purposes of collective bargaining by various local unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Union"). Wooleyhan was party to collective bargaining agreements which obligated it to make contributions to the Funds based upon hours worked by or paid to its employees domiciled in terminals located in Delaware and Pennsylvania.

During the period October, 1983 to April, 1985, Wooleyhan failed to pay contributions to the Funds. A settlement then painstakingly negotiated over many months with labor relations personnel of Wooleyhan was rejected by Respondents. The Welfare Fund is owed at least $12,971.01 and at least $34,424.54 is owed to the Pension Fund based upon remittance reports prepared by

Wooleyhan and submitted to the Funds for Delaware employees.[1] Additional monies are due for work by other employees. Wooleyhan has not paid to date and full collection from the corporate bankruptcy is not possible.

Respondents knowingly had Wooleyhan withhold the pension contribution payments in order to finance operations and preserve their stock interest. The Funds were originally advised that contributions were not being paid because of financial difficulties and a decision by the management of the Company, in particular the Respondents, not to pay the contributions owed to the Funds in order to use the money for other purposes. The Company continued to make contribution payments to the Welfare Fund until shortly before a corporate bankruptcy (to insure continued medical coverage of employees) and to submit reports. It simply and consistently omitted pension payments - which have only long-term effects on employees. The practice confirmed other reports that Respondent Roger E. Wooleyhan had specifically decided not to pay the pension contributions.

Petitioners filed a Complaint in the Superior Court of Delaware to protect their interests upon the bankruptcy of Wooleyhan. Respondents timely moved to dismiss the Complaint on the basis that the Wage Payment and Collection Act of Delaware ("WPCA"), 19 Del. C. Chapter 11, was pre-empted by ERISA.

The Superior Court granted Respondents' motion to dismiss concluding that the WPCA was pre-empted by ERISA, 29 U.S.C. § 1144 (a), because it "related to" an employee benefit plan. A-3, 4. The court relied on the decisions of this Court in *Shaw v. Delta Air Lines,* 463 U.S. 85 (1983); *Pilot Life Ins. Co. v. Dedeaux,* 107 S.Ct. 1549 (1987) and *Metropolitan Life Ins. Co. v. Taylor,* 107 S. Ct. 1542 (1987). A-3. Petitioners timely appealed.

By order dated June 23, 1988, the Supreme Court of the State of Delaware summarily affirmed the decision of the Superior Court "on the basis of and for the reasons assigned by the opinion of the Superior Court dated December 11, 1987." A-1. The Delaware Supreme Court, however, cited *McMahon v. McDowell,* 794 F.2d 100 (3d Cir.) *cert. denied,* 107 S.Ct. 473 (1986) as its principal reference. A-1. Petitioners seek a writ of certiorari to review the order of the Supreme Court of the State of Delaware.

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1. The delinquency has no impact on pension benefits to employees as the plan must credit them with service for all time for which contributions were required, whether or not paid. See, 29 C.F.R. § 2530.200b-2 (a) (1), (2); Rev. Rul. 85-130, 1985-2 C.B. 137.

REASONS FOR GRANTING THE WRIT

I. THERE IS AN APPELLATE CONFLICT ON PRE-EMPTION OF STATE LAWS CONCERNING MULTI-EMPLOYER BENEFIT PLAN COLLECTIONS

The Supreme Court of Delaware based its decision on *McMahon v. McDowell. McMahon* is inapposite as it involved a single employer plan not subject to the multiemployer plan remedies in 29 U.S.C. §§ 1145, 1132 (g) (2). This case involves a multi-employer plan under state law expressly saved from pre-emption by the special multiemployer plan amendments in 1980 and their legislative history.[2] As Justice White has noted on a similar question, *McMahon v. McDowell,* 107 S.Ct. 473 (1986) (White, J., dissenting), the Delaware court ". . . holding conflicts with the decision in *Sasso v. Vachris,* 66 N.Y.2d 28, 484 N.E.2d 1359 (1985)." Unlike *McMahon,* the law and facts are entirely parallel to *Sasso v. Vachris.*

In 1980, Congress enacted Section 515 of ERISA, 29 U.S.C. § 1145, to give multiemployer plans a specific federal statutory cause of action to collect contributions to supplement their third-party beneficiary claims under labor agreements. At the same time, Congress amended ERISA Section 502 (g), 29 U.S.C. § 1132 (g), to expand the relief provided to multiemployer plans if they prevail in an action to collect delinquent contributions. The changes explicitly sanction damage claims ". . . permitted under . . . State law," 29 U.S.C. § 1132 (g) (2) (C) (ii), and thus adopt and incorporate (the allegedly pre-empted) state law into the governing statute in specific terms.

Sasso v. Vachris explains the analytic error of the Delaware courts in ignoring the 1980 changes and their legislative history:

> Business Corporation Law § 630 imposes personal liability upon the ten largest shareholders of closely held New York corporations for the payment of wages and salaries due and owing to its employees. The statute

---

2. A multiemployer plan is, by definition, a product of arm's-length collective bargaining, 29 U.S.C. § 1002 (37). Under 29 U.S.C. § 186 (c) (5), the Fund and its assets must remain separate from both the union and the employer. C.f., *N.L.R.B. v. Amax Coal,* 453 U.S. 322 (1981) (Employer may not insist on multiemployer plan representation in collective bargaining). As succinctly described in *Connolly v. PBGC,* 673 F.2d 1110, 1112 (9th Cir. 1982), the Fund operates as an intermediary receiving fixed contributions from employers and paying benefits to employees from available assets.

expressly defines wages and salaries to include employer contributions for welfare benefits and to pension funds . . . . It is designed to remedy precisely the default which is alleged in this litigation. . . .

Section 630 "relates to" the scope of shareholder immunity [under state law] . . . . like the Pennsylvania Wage Payment and Collection Law considered in *Carpenters Health and Welfare Fund of Philadelphia v. Kenneth R. Ambrose, Inc.* (727 F.2d 279) . . ., the only effect of section 630 on employee benefit plans is to give plaintiffs a cause of action to recover payments the corporation was already obligated to provide.

* * *

Nor do the 1980 amendments to ERISA indicate an intent on the part of the Congress to preempt existing state remedies such as Section 630. They merely added a statutory obligation upon employers to make contributions to multiemployer plans as required by the terms of the employee benefit plan or the collective bargaining agreement . . . . Contrary to the position taken by the Defendants, the relevant legislative history of these amendments evinces a specific congressional intent that *ERISA's civil remedies merely supplement, rather than supersede, existing state remedies* . . ., at least insofar as they provide for the collection of delinquent employer contributions to [multiemployer] employee benefit plans . . .*

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* The Senate Labor and Finance Committee's Joint Explanation of S. 1076 which contained the provisions that later became 28 U.S.C. §§ 1145 and 1132 (g) (2), contained the following statement:

Under the bill, in the case of a civil action by any person to collect delinquent *multiemployer* plan contributions, *regardless of otherwise applicable law,* in which a judgment in favor of the plan is awarded, the court before which the action is brought must award the plan (1) the unpaid contributions; (2) interest on the unpaid contributions; (3) an amount equal to the greater of interest on unpaid contributions or liquidated damages under the plan not to exceed 20% of the

> amount of delinquent contributions as determined by the court. The bill preempts any state or other law which would *prevent* the award of reasonable attorney's fees, court costs or liquidated damages or which would *limit* liquidated damages to an amount below the 20% level.
>
> However, the bill does not preclude the award of liquidated damages in excess of the 20% level where an award of such higher level of liquidated damages is permitted under applicable state or other law. *This [law] does not change any other type of remedy permitted under state or federal law with respect to delinquent multiemployer plan contributions"* (126 Cong. Rec. at p. 20202).
>
> The Report of the House Ways and Means Committee to accompany H.R. 3904, the companion house bill, contained a virtually identical statement (See, H.R. Rep. No. 889, 96th Cong., 2d Sess., Part II 48-49, *reprinted in* 1980 U.S. Code. Cong. & Ad. News 2918, 3037-3038). Also *it is clear that* both Houses of *Congress viewed the* enforcement *amendments of 1980 as setting* forth *a floor of federal remedy in the case of delinquent [multiemployer plan] contributions* below which the states could not go *but which did not preempt or supersede state remedies that granted greater protection than* that contained in *ERISA*.

Id., 484 N.E.2d, at 1360-1364 (emphasis added). The Third Circuit reached the same obvious conclusion in a prior case involving a multiemployer plan, *Carpenter's Health and Welfare Fund of Philadelphia and Vicinity v. Kenneth R. Ambrose, Inc.*, 727 F.2d 279, 282 n. 5 (3d Cir. 1983). There is no apparant consideration of the 1980 amendments and their legislative history by the Delaware courts or other cases on this subject.

The separate treatment of multiemployer plan funding as a commercial transaction permeates the statute and its policy. In promulgating ERISA Prohibited Transaction Class Exemption 76-1, 1976-1 C.B. 357, shortly after the enactment of ERISA in 1974, the Department of Labor and Internal Revenue Service concluded that ". . . participating employers have little, if any, control over the contribution collection efforts made by [multiemployer] plans," 1976-1 C.B. at 359. The exemption thus treats

the relation between the employer and a multiemployer plan as an arm's-length commercial transaction. It provides that the failure to collect a delinquency from an employer by a multiemployer plan is not a prohibited transaction (subjecting the employer and plan fiduciaries to liability under 29 U.S.C. § 1106) as long as the plan makes commercially reasonable attempts at collection. The agencies expressly refused to treat funding of single employer plans collectively bargained, as an arm's length relationship, noting the absence of safeguards in the form of independent administration of the collection process, 1976-1 C.B. at 360.

The Delaware court legislated a repeal of the Delaware WPCA in favor of application of traditional shareholder and officer immunity under prior *state* corporate law. Pre-emption, however, means a complete nationwide substitution of *federal* policy as federal common law under ERISA, *Massachusetts Mutual Life Ins. Co. v. Russell,* 473 U.S. 134, 156-157 (1985) (Brennan, White, Marshall, Blackmun, JJ., concurring). Federal common law is developed from expressions of *federal* policy, *DelCostello v. Teamsters,* 462 U.S. 151, 171-172 (1983). Here, that federal policy guidance suggests corporate officer and shareholder liability — under precisely the same standard of willfulness as the Delaware WPCA — by reason of the similarity of language in the "employer" definitions in ERISA and the federal minimum wage law. *C.f., Massachusetts Laborers H. & W. Fund v. Starrett Paving Corp.,* 845 F.2d 23, 24-25 (1st Cir. 1988) (officer can be ERISA "employer" in view of similarity to Fair Labor Standards Act). 29 U.S.C. § 1106 (a) condemns the delinquency as a prohibited and "void" loan from the plan to "parties-in-interest," including the contributing business, its officers and ten percent (10%) owners, 29 U.S.C. § 1002 (14) (C), (H). *See also* Rev. Rul. 80-140, 1980-1 C.B. 89 (single employer plan delinquency is prohibited transaction under parallel tax section).[3] 29 U.S.C. § 1132 authorizes both legal and equitable relief for any violation of ERISA's prohibited transaction rules. The general rules of ERISA thus do not follow traditional corporate law apparently applied by the Delaware courts.

The delinquency in this case was willfully incurred to obtain unsecured credit to finance operations without an infusion of

3. In a single-employer pension plan the employer is directly subject to minimum funding excise taxes under 26 U.S.C. §§ 412, 4971. By contrast, multiemployer plan contributions are regulated only for the "plan" as an aggregate of all employers, 29 U.S.C. §§ 1082, 1060 (a) (3); 26 U.S.C. §§ 412, 413 (b) (5). Amounts not collected from one employer may be balanced by higher payments from another company.

capital and would justify a constructive trust to remedy the resultant benefit occasioned to corporate owners and officers. The 1980 ERISA amendments allow the law of labor contracts and state law to operate with respect to multiemployer plans in this context to complement the treatment of multiemployer plan funding as an arm's-length transaction under Class Exemption 76-1.

II. THE GENERAL QUESTION OF PRE-EMPTION OF STATE LAW AFFECTING COMMERCIAL TRANSACTIONS INVOLVING EMPLOYEE BENEFIT PLANS IS IMPORTANT

The language of 29 U.S.C. § 1144 (a) contains an object as well as a subject and verb. It pre-empts state laws only ". . . insofar as they . . . relate *to any* employee benefit *plan* [as defined in ERISA] . . ." (emphasis supplied). The verb "relates" to the object — an "employee benefit plan." The term "employee benefit plan" is a term of art under 29 U.S.C. §§ 1002 (1), (2), (3) and 1132 (d) (2) referring to a "plan, program or practice" for benefits which is deemed to be a separate federally-organized entity. Pre-emption extends only to laws affecting the federal entity and its operations as such. The Delaware court mistakenly expanded the sentence to cover any state law relating to a transaction involving a plan with devastating implications for state regulation in the national economy.

The only tie between the Delaware WPCA and the Funds is a potential effect on the plan's income. The contract is negotiated by the union and employer at arm's-length without the Funds. Each employer pays a fixed sum. Benefits are provided out of the pool of assets created by all contributions without regard to the particular experience of the employees of a single company. *C.f.*, 29 C.F.R. § 2615.2 "Plan"; 26 C.F.R. § 1.414 (l)-1 (b) (1) (Plan is defined by availability of assets for all participants; 26 U.S.C. § 414 (l) parallels 29 U.S.C. § 1058). The action does not involve a claim for payment of benefits, n. 1, *supra.*

The apparent theory of the Delaware courts is that "ERISA may not confront the . . . issue at this time, but [29 U.S.C.] Section [1144 (a)] has cleared the decks for such provisions, should Congress choose to address this concern in the future," *Plumbers Local 598 J. & A. T. F. v. J. A. Jones Constr. Co.*, 846 F.2d 1213, 1220 (9th Cir. 1988), quoting *Stone & Webster Eng'g Corp. v. Ilsley*, 518 F.Supp. 1297, 1301 (D. Conn. 1981) *aff'd*, 690 F.2d 323 (2d Cir. 1982) *aff'd mem.*, 463 U.S. 1220 (1983). The proposition proves entirely too much in application to any trans-

action involving an employee benefit plan. It creates a federalized vacuum of commercial law which Congress never adopted under its power to regulate interstate commerce.

A few examples of the implications of the Delaware decisions should suffice.

State Corporate and Securities Laws. The cases to date reject pre-emption of state corporate law relating to transactions involving a corporation, its directors and a benefit plan shareholder, *Sommers Drug S. Co. E. P. S. Trust v. Corrigan Enterprises, Inc.*, 793 F.2d 1456, 1465-1470 *reh'g denied*, 797 F.2d 977 (5th Cir. 1986) *cert. denied*, 107 S.Ct. 884 and 107 S.Ct. 1298 (1987). Employee benefit plans regulated by ERISA directly own an enormous amount of publicly-traded stock — as much as 25% of all private capital. These investments and employer contributions are the major sources of plan income. State corporate laws regulating dividends, takeovers, limited shareholder and officer liability and similar matters have a direct and substantial "relation" to the value of a plan investment and income received. They would be pre-empted under the decision below because of this "relation" to a plan to "clear the decks" for Congress to act in the future.

Personal Injury. The courts already are in confusion over the right of a state to award damages for loss of fringe benefits in a personal injury action. *Compare Stone & Webster Eng'g* (order to continue payment of welfare benefit contributions [insurance premiums] in worker compensation case pre-empted) *and Plumbers Local 598 J. & A. T. Fund* (state may not regulate its government contracts to require fringe benefit payments for employees of contractor) *with Martori Bros. Distributors v. James-Massengale*, 781 F.2d 1349, 1359 *amended*, 791 F.2d 799 (9th Cir.) *cert. denied*, 107 S. Ct. 435 (1986) (no pre-emption of damages award covering loss of fringe benefits) *and Greenblatt v. Budd Co.*, 666 F.Supp. 735, 742 (E.D. Pa. 1987) (misrepresentation claim not pre-empted merely because deception involved pension benefits).

Fringe benefits represent a large portion of payroll expenses throughout the country. Damages for loss of benefits can increase or decrease tort judgments by millions or even billions of dollars. Under *Plumbers Local 598 J. & A. T. Fund*, the sovereign states cannot even require payment of health benefit premiums under government contracts to protect themselves from claims for medical expenses for employees injured on government work sites.

State Law Liens. Employee benefit plans own billions of dollars of investments in real estate, mortgages and similar loans.

Multiemployer plans also collect millions of dollars a year in contributions through judgments. The value and collectibility of these investments and receivables hinges on state laws governing consensual and judgment liens on real estate or security provided under the various state versions of the Uniform Commercial Code. ERISA itself requires that certain loans by a benefit plan be ". . . adequately secured," 29 U.S.C. § 1108 (b) (1). In *Carpenters Health & W. T. Fund v. Parnas*, 176 Cal.App.3d 1196, 222 Cap.Rptr. 668 (Calif. Ct. App. 1986), the court rejected a pre-emption attack on a mechanic's lien law. *See also Planned Consumer Marketing, Inc. v. Coats & Clark, Inc.*, 71 N.Y.2d 442, 522 N.E.2d. 30 (1988) (New York creditor's rights laws not defeated by transfer of assets to benefit plan). The Delaware court and, recently, the California Court of Appeals, *Carpenters So. Calif. Adm. Corp. V. El Capitan Development Co.*, 197 Cal.App.3d 790, 243 Cal.Rptr. 132 (Calif., Ct. App. 1988) (mechanic's lien pre-empted), conversely would pre-empt all state creditor remedies in cases involving benefit plans.

Congress drew a more limited line pre-empting only matters relating to the "plan" as a federal entity and its administration. Laws which neither require nor affect an ongoing "plan, program or practice" are not pre-empted even though they concern benefits of a type mentioned in ERISA, *Fort Halifax Packing Co. v. Coyne*, 107 S.Ct. 2211 (1987). In the area of suits against independent contractors, the courts have examined whether the suit is, in practical effect, against the federal plan entity. *Compare Metropolitan Life Ins. Co. v. Taylor*, 107 S.Ct. 1542 (1987) (state claims for improper benefit processing against outside contract administrator can be removed as ERISA claim; General Motors plan had insurance risk and appeared for employer, plan and Metropolitan) *and Bruenn v. Aetna Life Ins. Co.*, 197 Cal.App.3d 1000, 243 Cal.Rptr. 262 (Calif. Ct. App. 1987) (same; noting lack of shift in insurance risk from plan to insurer) *with Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985) (regulation of insurance policies to mandate benefits not pre-empted) *and Isaacs v. Group Health, Inc.*, 668 F.Supp. 306, 312 (S.D.N.Y. 1987) (state claims for breach of contract between plan and service provider and negligence not pre-empted) *and West Michigan Health Care Network v. Transamerica Ins. Corp.*, 167 Mich. App. 218, 421 N.W.2d 638 (Mich. Ct. App. 1988) (no pre-emption of state law imposing primary liability on HMO providing employee plan benefits). A different approach would force virtually every dispute over provision of group insurance or services by

or on behalf of an employee benefit plan into federal court due to its exclusive jurisdiction of most ERISA claims. 29 U.S.C. § 1132.

The law governing transactions between non-plan parties is not displaced, even on funding matters, simply because the transaction involves a plan, *Murphy v. Heppenstall*, 635 F.2d 233 (3d Cir. 1980) *cert. denied*, 454 U.S. 1142 (1982) (agreement between an employer and union to pay more than ERISA minimums for benefits not precluded by ERISA funding rules). The line between "internal" administration of the Plan and "external" commercial dealings involving the Plan is not always easy to draw. The line may be especially unclear in funding matters and perhaps necessitated the express savings clause which Congress enacted in 1980 for multiemployer plan collections.

This case and its underlying Congressional policy present a unique opportunity for the Court to define the parameters of pre-emption in commercial dealings with benefit plans. A decision will help plans and their service providers identify applicable law and predict the consequences of their actions in billions of dollars of transactions involving benefit plans throughout the country.

CONCLUSION

Petitioners ask that a writ of certiorari issue to review the Order of the Supreme Court of the State of Delaware in this case.

Respectfully submitted,

THOMAS W. JENNINGS
Counsel of Record
KENT CPREK
SANFORD G. ROSENTHAL
SAGOT & JENNINGS
1172 Public Ledger Building
Independence Square
Philadelphia, PA 19106
(215) 922-6700

Attorneys for Petitioners

September 19, 1988

APPENDIX "A"

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TEAMSTERS PENSION TRUST FUND OF PHILADELPHIA AND VICINITY, and TEAMSTERS HEALTH AND WELFARE FUND OF PHILADELPHIA AND VICINITY and CHARLES J. SCHAFFER, JR.,	:	No. 2, 1988
Plaintiffs Below, Appellants,	:	Court Below—Superior Court of the State of Delaware, in and for New Castle County, C.A. No. 85C-JL-11
v.	:	
ROGER E. WOOLEYHAN, RALPH K. FILLINGAME, WILLIAM A. PHILLIPS and ROGER B. WOOLEYHAN,	:	
Defendants Below, Appellees.	:	

Submitted: May 10, 1988
Decided: June 23, 1988

Before MOORE, WALSH and HOLLAND, Justices.

ORDER

This 23rd day of June 1988, the Court having considered the record and briefs of the parties, and it appearing that this matter should be affirmed on the basis of and for the reasons assigned by the opinion of the Superior Court dated December 11, 1987, *Cf. McMahon v. McDowell,* 794 F2d 100 (3d Cir.), *cert. denied,* 107 S.Ct. 473 (1986).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is,

AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland

Justice

APPENDIX "B"

SUPERIOR COURT
OF THE
STATE OF DELAWARE

Submitted: July 23, 1987
Decided: December 11, 1987

VINCENT A. BIFFERATO
JUDGE

Re: Teamsters Pension Trust Fund of Philadelphia and Vicinity, et al. v. Roger E. Wooleyhan, et al. C.A. No. 85C-JL-11

Francis J. Trzuskowski, Esq.
Trzuskowski, Kipp, Kelleher & Pearce
P.O. Box 429
Wilmington, DE 19899

Richard D. Levin, Esq.
Connolly, Bove, Lodge & Hutz
1220 Market Building
P.O. Box 2207
Wilmington, DE 19899

Gentlemen:

This action was brought by the Teamsters Pension Trust Fund of Philadelphia and Vicinity (the "Pension Fund") and the Teamsters Health and Welfare Fund of the Philadelphia and Vicinity (the "Welfare Fund")[1] against Wooleyhan and certain officers and agents of Wooleyhan (the "Individual Defendents").

The plaintiffs claim that the Funds are "multi-employer plans" and "employee benefit plans" within the meaning of 29 U.S.C. § 1002 (5), (11) and (12) of the Employee Retirement Income Security Act of 1974 as amended by the Multi-Employer Pension Plan Amendment Act of 1980 ("ERISA").

The plaintiffs allege that Wooleyhan was a party to collective bargaining agreements with locals of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Under the agreement, Wooleyhan promised to make certain payments to the Funds. The plaintiffs claim that Wooleyhan failed to pay contributions to the Funds and that, by virtue of 19 *Del.C.* c. 11, the Individual Defendants are liable for such payments and other damages.

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1. The Welfare Fund and the Pension Fund will be referred to collectively as the "Funds."

The defendants have moved to dismiss the complaint on the basis that 19 *Del.C.* c. 11 is preempted by ERISA. They claim that ERISA preempts all actions based on state law relating to employee benefit plans and provides no action for individual liability for delinquent corporate contributions to employee benefit plans. The plaintiffs contend, on the other hand, that ERISA permits multi-employer plans to pursue collection remedies under state law in addition to the remedies under ERISA.

ERISA contains an explicit and broad preemption provision. Section 1144 of Title 29 of the United States Code provides:

> "[ERISA] shall supercede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003 (a) and not exempt in section 1003 (b) of this title."

The federal courts have held that the words "relate to" should be construed expansively. A law relates to an employee benefit plan, in the normal sense of the phrase, if it has connection with or reference to such a plan." *Shaw v. Delta Airlines*, 463 U.S. 85, 96-97 (1983). Thus, if the claims filed under the Wage Payment and Collection Act "relate" to an employee benefit plan, they fall under ERISA'S preemption clause.

The Court finds persuasive the two recent United States Supreme Court Opinions, *Pilot Life Insurance Co. v. Dedeaux*, 107 S.Ct. 1549 (1987), and *Metropolitan Life Insurance Company v. Taylor*, 107 S.Ct. 1542 (1987), cited by the defendant for the proposition that ERISA preempts all state laws pertaining to employee benefit plans. In *Pilot Life*, the Court held that ERISA, by virtue of 29 U.S.C. § 1144, preempted state common law tort and contract actions. 107 S.Ct. at 1553.

In *Metropolitan Life*, the companion case to *Pilot Life*, the Court held that ERISA displaced state law causes of action relating to employee benefit plans. 107 S.Ct. at 1546. Justice O'Conner, writing for the Court, stated that "[a] suit by a beneficiary to recover benefits from a covered plan . . . falls directly under [29 U.S.C. § 1132 (a) (1) (B)] . . . which provides an exclusive federal cause of action for resolution of such disputes." *Id.* Because ERISA preempted state law, and because 29 U.S.C. § 1132 (f) specifically granted jurisdiction over ERISA matters to the federal courts, the Court further held that even state actions purporting to allege only state law claims were actually federal in character and, as such, removable to federal courts as a matter of right. *Id.* at 1548.

The Court concludes that insofar as the Wage Payment and

Collection Act authorizes the liability of Wooleyhan or the Individual Defendants for unpaid employee benefit plan obligations, it relates and pertains to the underlying employee benefit plans. Therefore, the plaintiffs' claims filed pursuant to 19 *Del.C.* c. 11 are preempted by ERISA. *Metropolitan Life*, 107 S.Ct. at 4469. Accordingly, the defendants' motion to dismiss is GRANTED. IT IS SO ORDERED.

Very truly yours,

/s/ Vincent A. Bifferato

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